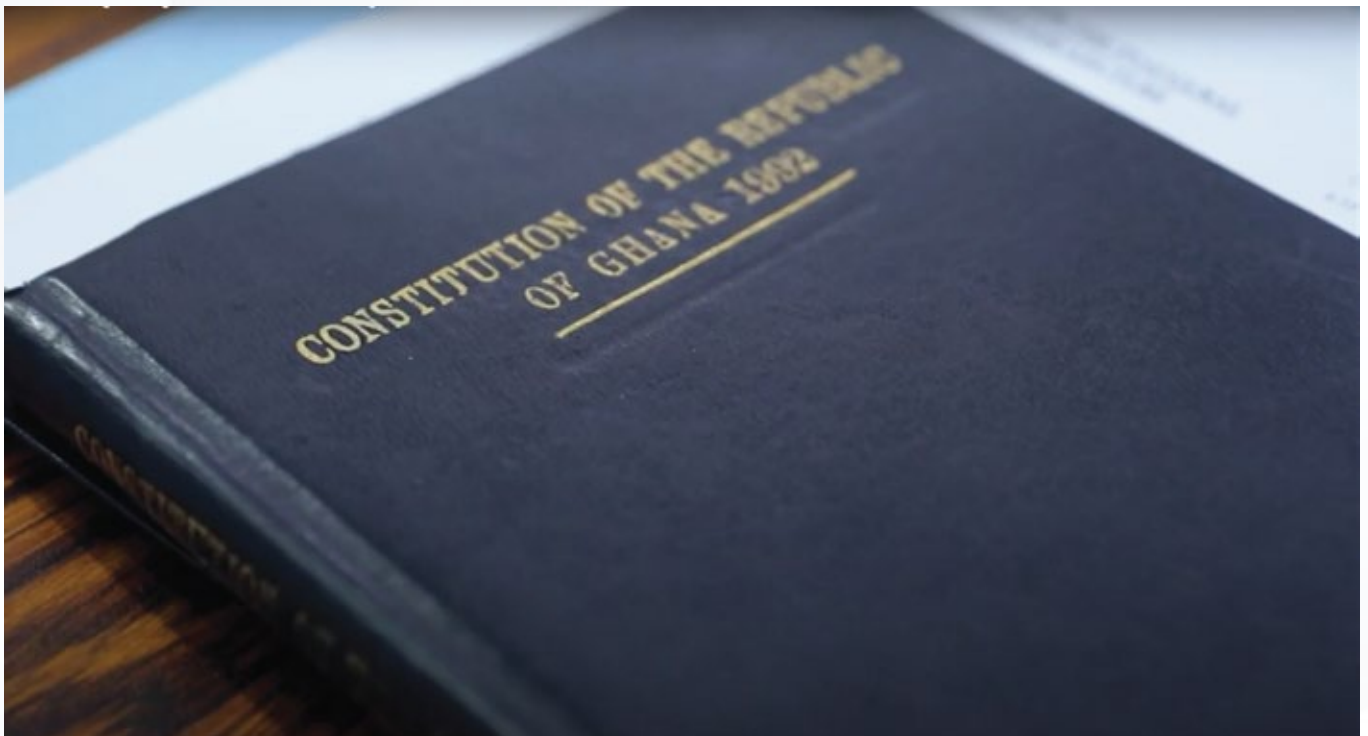




MONDAY ESSAY
With
REGINALD
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**A LIVING ORGANISM CAPABLE OF GROWTH: A RANDOM
THOUGHT ON MOMENTS OF CHANGE IN THE LIFE OF OUR
NATIONAL CONSTITUTION**

REGINALD NII ODOI

INTRODUCTION

The 1992 Constitution is therefore the sum total of our hopes, disappointments, experiences and expectations as a nation. If we forget the historical development of our Constitution then we fail to recognize that it is a living organism capable of growth.

Indeed, our constitution, like life itself must of necessity have its moments of change - its period of its own past. As the body politic of Ghana itself is capable of growth and development, it must be generally accepted that the constitution is not a closed system of eternal rules elevated above time and space. The sustenance of the constitution depends on the measure of the justice it embodies and its power to embody ideals of justice depends on its implementation by men and women imbued with vision, moral virtue and values. The end goal of its implementation should allow the constitution to respond in a positive way to the moral elevation of its people beyond their state of misery and distress. In like manner, the **1992 Constitution** under **Chapter 25** allows all provisions of the constitution to be capable of amendment, subject to those listed in the transitional provisions which cannot be amended. **Article 289(1)** provides that “Parliament may, by an Act of Parliament, amend any provision of this Constitution.” I will turn to a random thought on Private Members Bills on which there appears to be uncertainty in the operation of the 1992 Constitution.

Private Members Bill

Article 108 of the 1992 Constitution deals with the settlement of financial matters and states that only the President or someone designated by the President can propose to Parliament for passage, a Bill or an amendment to a Bill which has financial implications. Paragraph (a) of **Article 108** further states that the restriction relates to Bills to which, in the opinion of the person presiding, make provision for:

- a. the imposition of taxation or the alteration of taxation otherwise than by reduction; or
- b. the imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction; or
- c. the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal; or
- d. the compensation or remission of any debt due to the Government of Ghana.

The above means that Parliament is not allowed to proceed on any Bill which seeks to do any of these if it is not introduced by or on behalf of the President. In reliance of this constitutional provision, it has been argued that every Bill has **financial implications**, that is to say, every Bill proposed to Parliament for passage directly or indirectly makes provision for any of the items specified in Article 108. As a result, the practical effect of Article 108 is that a person who is not acting on behalf of the President is not entitled to propose a Bill to Parliament for passage. According to the Constitutional Review Commission’s Report, submissions received on the above provisions were to the effect that the power to initiate private members bills should continue to be fettered so as to ensure that the Executive, which is elected into office to execute a particular agenda is not constrained in the ways in which it applies the scarce resources to the realization of its agenda.

Unclear meaning of a Bill having Financial Implications

It is submitted that there is a problem when a blanket statement is made that “every Bill has financial implications.” Respectfully, that assertion is based on an erroneous understanding of the constitutional provisions and does not take into account the distinction between the **sole purpose of a Bill and matters incidental to a Bill**. For example, according to VCRAC Crabbe, a Bill creating a charge on the Consolidated Fund is clearly a measure relating to a Money Bill. On the other hand, a Bill proposing the introduction of non-custodial sentences for an offence under an enactment cannot and should not be described as a Money Bill. Such a Bill referred to in the latter example would not involve expenditure from the Consolidated Fund or any other public funds neither would it involve any additional expenditure. The Bill would rather enure to the benefit of the Government and the benefit of the whole population by providing alternative means of punishment for offences and by so doing reduce the mouths to feed in the prisons and by extension cause no strain on the Consolidated Fund.

Historically, **Article 108** is inspired by and based on practices of the United Kingdom Parliament and those practices in the UK parliament have never prevented a member or person from introducing a Private Member’s Bill. The exclusive right of the Executive to introduce “Money Bills” does not exist in the UK meaning that members of the House of Commons have the right to introduce Private Members Bills without restriction as to the subject matter. It is interesting to note that the **Matrimonial Causes Act, 1937** of UK which greatly influenced Ghana’s **Matrimonial Causes Act of 1971** was a Private Member’s Bill introduced by A.P. Herbert. There is therefore a need to clarify, in the constitution, what is generally meant by bills with financial implications.

The current constitutional dispensation where discretion is given to the Speaker of Parliament to determine whether a Bill has a financial implication has and would continue to create a lot of inconsistencies and incoherence in the exercise of the discretionary power. It is thus critical that clarity is brought by amending the constitution to specifically define what is meant by Bills with financial implications. More so, a proper reading of the constitution in Article 108 would reveal that a right exists to promote a Bill to, for example, propose a reduction of the number of the members of the Board of say the Legal Aid Scheme. Such a Bill cannot be said to be a Money Bill because the Bill would not entail an expenditure which will involve the withdrawal of moneys from the Consolidated Fund. Besides, **Article 108** allows such possibility by the inclusion of the phrase “*otherwise than by reduction*” used in **sub-paragraphs (i) and (ii) of paragraph (a)**.

Conclusion

It is recommended, in line with the CRC’s report that the current limitation on the introduction of Bills with financial implications by private members be maintained only if such limitation relates to “*Money Bills*”. As the constitution is presently, “*Money Bills*” have not been defined clearly as a terminology and the absence of such a clear definition creates problems including the blanket and outright dismissal of Private Members Bills being introduced, passed and/or assented to by the President of the Republic. This would bring much needed clarity and allow for the free introduction of reasonable and well considered Bills which are in the best interest of the nation even though not considered by the Executive for political reasons.

We must all be equal to the task the Constitution imposes on us which includes ensuring that it remains a living organism capable of growth. We must recognize the nobility of the 1992 Constitution and carry out the duty of ensuring that it keeps in step with the spirit of time and age, adapted and reshaped to new needs and new compulsions.

God bless!



ABOUT THE AUTHOR

REGINALD NII ODOI is a Barrister and Solicitor of Ghana who obtained his Master of Laws (LLM) Degree from Harvard Law School in Cambridge, USA. He is also a proud alumnus of Kwame Nkrumah University of Science and Technology (KNUST) where he graduated with First Class Honors and notably served as the President of the Law Students' Union and the Legal Affairs Commissioner of the SRC, amongst others. He was called to the Ghana Bar in 2016. His research areas include Comparative Constitutional Law; Corporate & Commercial Law; International Investment Law and Arbitration and International Law. His goal is to contribute to re-envisioning the way effective lawyering could be done in today's world.